APPENDICES

APPENDIX A

Supplemental and Corrective Statement of Essential Facts of Case

Crookham had worked for The New York Central Railroad Company and its predecessors since 1913. At various times he had been an assistant section foreman, a section foreman and section hand. His duties consisted of the usual duties of section hands on railroads, such as removing ties from the roadbed, replacing old ties, replacing broken rails, repairing tracks, maintaining track along right of way, etc.

Prior to December 28, 1955, the Company maintained a passing-track near Beech Hill, Mason County, West Virginia, but, as the same was no longer necessary for its operations, it was being removed. In fact the rails had already been removed and the old ties were either being used for fence posts to repair fences along the right of way, given to farmers for fence posts or other uses, or being burned along the right of way.

On December 27, 1955, a Tuesday, several of the section crew were removing some of these ties from this passing-track and burning them. Others were digging fence-post holes along the right of way. The section crew at that time consisted of a foreman and seven employees, an eighth employee being away on vacation. On December 28, the section crew was building a fence along the right of way. The crew had left its section headquarters at Arbuckle, West Virginia, about 7:00 A. M., and proceeded west on U. S. Route 35, about four and a half or five miles to the Beech Hill passing-track, in the railroad company truck. This truck was used for the purpose of transporting men to and from work, as well as transporting various types of equipment used in railroad work, such as tie-

tongs, lining bars, picks and shovels. This truck was parked along the right of way where the men were working, and it was from it that they obtained the various tools used by them in their work. The men started work, building fence, as soon as they got on the job. About 9:00 A. M., a storekeeper and part time farmer by the name of Everett Sayre drove his Dodge flat bottom truck to where the men were working, and asked the foreman if he, Sayre, could have some of the ties that were being removed from the passing-track. The foreman, Whittington, informed him that he could. Sayre then drove his truck from U. S. Route 35 over onto the right of way, which paralleled U. S. Route 35 at that point, and onto the passing-track, where he backed it up to the roadbed where the ties were. The foreman, Whittington, requested four of the crew, of which Crookham was one, to help Sayre load his truck. Since all the men were experienced section men, no further instructions were given as to what tools were to be used. The foreman stayed with the other three members of the crew who were getting brush out of the fence row. One of the four men took from the tool truck, which was located close to where the men were working, a lining bar (crow bar), which is a long steel bar customarily used in aligning track. This bar was taken for the purpose of prying out of the roadbed any of the ties that might yet be stuck in the ballast after the rails had been removed. The ties varied in mass and, in their wet condition, weighed from 125 up to 220 pounds (R. 80). The method of loading the ties, after they were pried loose, was this: One man would be on one end, one on the other and two in the middle, and they would lift the tie up and put it on the back of the bed of the truck, which was four feet above the ground; the ties would then be pushed forward on the truck bed; sometimes, while the truck driver and one of the crew was pushing the ties forward, the other three men, one on each end and one in the middle, would lift the ties from

the ground onto the truck (R. 78, 79); after a few ties would be loaded the truck would be backed up so that it would be close to where the ties were located on the ground.

The plaintiff, in his testimony, insinuated, but did not definitely say, that the crew should have used tie-tongs to load the truck; however, the four men, besides Crookham, who loaded the ties on the truck, all testified, including plaintiff's witness Roy B. Hayes, who was 56 years of age and had worked for the railroad since 1917, that the easiest way to load the ties on the truck was by hand and not by use of tie-tongs.

Hayes testified:

> "Q. In other words, the easier way to load the ties would be to use hands, wouldn't it?
> A. Yes, sir, it would be." (R. 149)
>
> * * * * * * * * *
>
> "Q. The reason you didn't take any (tie-tongs) to load the truck you thought it was easier to load with hands than with tongs, did you not?
> A. Well, yes." (R. 151)

Harold Luikert, a witness for the defendant, who loaded the truck both in the forenoon and afternoon, testified:

> "Q. Did you use any tie-tongs in loading these ties (on the truck)?
> A. No, sir.
> Q. Why?
> A. * * * I thought it would be easier to take our hands to throw them up. If we threw them, it is half foot or foot more higher with the tongs.
> Q. Then, if I understand, the way you loaded was easiest and best way to load (ties).
> A. That's right." (R. 189)

H. E. Dunlap, witness for the defendant, who loaded the truck in the afternoon only, testified:

"Q. Did you use tie-tongs in loading the Sayre truck?

A. No.

Q. Why?

A. It would have been impossible to load a truck like that with tongs.

Q. Explain to the jury.

A. The truck was high and the tongs when you pick them up, you see, you get about that much higher, about fourteen inches above when you work tongs on ties. Then your hand reach is up here, but when you are lifting with your hands, why you just get it up there. Loading by hand it loads easier." (R. 199)

* * * * * * * * * * *

"A. That is the easiest way to get them on the truck, was to pick them up by hand and throw them up on there." (R. 200)

Ernest Plants, witness for the defendant, testified:

"Q. Was any instructions given about what tools you should take or not take?

A. No, sir.

Q. Why didn't you take some tie-tongs along?

A. Well, we didn't need them in my opinion.

Q. Why?

A. This truck, he backed right down where the side track we was loading. Tie-tongs would have been no benefit to throw them up. If you had tongs even four men would have to lift as high as his head to get them on the truck with tongs.

Q. Then you would say that it was easier to load without tongs?

A. To use tongs to throw them up was practically impossible on this truck." (R. 206)

L. T. Whittington, foreman, testified:

"Q. Now, what is the safest and the easiest way to load ties on the truck which Mr. Sayre had?

A. By hand.

Q. In what way? How by hand?

A. By just taking a bar, loosening the tie, picking it up, tossing it on the truck. If you take tongs, you have to lift above your head to stack them on the truck." (R. 216)

Crookham testified:

"Q. You had loaded ties before without tongs?
A. Not on a high truck like that. I had on push cars, yes." (R. 77)

When Crookham took the ties from the road bed to the fence line for posts sometimes he would do it by tongs, sometimes by hand. He testified on direct examination.

"Q. How were you lifting those ties on this morning from the road bed to the right of way of the fence, by hand or by tongs?
A. Sometimes by hand and sometimes by tongs.

When the men were lifting the same kind of ties from the ground and putting them in the postholes, two men would do it and sometimes one would do it. Crookham testified:

"A. Most of the time two men picked it up and put it in the hole.
Q. Sometimes one man would, wouldn't he?
A. Yes." (R. 83)

Crookham at the time weighed 165 pounds and the other three men were smaller. All were about the same age, and had many years of experience as section men. Crookham, himself, had been a foreman. Plants, one of the other employees (although he was employed as a section laborer at the time of the accident), had been a foreman before the accident and was acting as foreman at the time of the trial. These men had worked with one another as a section crew over a period of many years. All were familiar with the type of work being done. Their specific

weights and ages were: Plants, age 56, weighed 135 pounds; Luikert, age 58, weighed 145 pounds; Dunlap, age 58, weighed 145 pounds; and Crookham, age 61, weighed 165 pounds.

After the ties were loaded upon the Sayre truck, Sayre drove the truck away and the men returned to their other work. In the afternoon Sayre returned for another load of ties, and the foreman, as he had done in the morning, directed that four men help Sayre load the truck. The instruction given by Whittington, the foreman, was that "Four of you men help Sayre load the truck", or words of similar import. These men, in a sense, volunteered for the work. One of the men who helped load the truck in the morning did not load in the afternoon. Crookham, however, loaded on both occasions. All of the men, both the morning shift and the afternoon shift, were experienced section men who had done this work before and were familiar with the procedure and knew what to do and what tools to employ. There were sets of tie-tongs in the company truck which was located at the place where the men were working (R. 216). These tongs were available for the men if they elected to use them. However, all of the rest of the crew who loaded the truck, whether witnesses for the plaintiff or defendant, stated that it was much easier to load them by hand than to try to load them with the tie-tongs, as lifting with the tie-tongs would be more strenuous, in that the height of the lift would be 18 to 20 inches higher by the use of tie-tongs than without them. (A picture of the tie-tongs as an exhibit is in the record). Moreover, Crookham testified that he had previously loaded ties for himself on a truck with three men by hand and without tongs (R. 86).

The men, including Crookham, selected their own tools. They selected a lining bar and not tie-tongs to do the work. It is clear that the lining bar was determined by the men to be the satisfactory tool for the work to be done, since

they selected the same tool to do the identical work in the morning and in the afternoon. Both tools were available; they could have selected either or both.

Crookham testified that they had enough men to load the truck and there was nothing unusual in a section man lifting 100 pounds (R.81). He further testified that, although he wore glasses to correct his vision, he knew of no defect of his eyes prior to this time (R. 85, 87). No one else in the crew, including the foreman, knew of any defect in Crookham's eyes (R. 220). Crookham contends that due to lifting the ties, the retina of his left eye became detached, and as a result of the operation in re-establishing the detached retina he became blind in the left eye.

The next morning, December 29, when he got up to go to work, he discovered that his left eye was blind. He reported this fact to his foreman, and the foreman inquired as to whether or not he wanted to go to see a doctor. He said he did not, that he thought he had gotten something in his eye, and that it would be all right. That day the crew built fence. The next day, December 30, Crookham, along with other employees, patrolled the tracks with a motor car to inspect the rails, ties, joints, etc. On Saturday, the 31st, Crookham went to see his oculist, Dr. Nibert, who previously had fitted him for glasses. During the examination Dr. Nibert discovered that Crookham had a detachment of the retina of the left eye. The doctor sent him to Dr. Pensmidt, an ophthalmologist at Gallipolis, Ohio, who confirmed the diagnosis and had Crookham return to the hospital Saturday night, December 31, where he remained until January 5, 1956, when the operation was performed that resulted in the re-attachment of the retina, but the left eye was left blind.

In an attempt to attribute the detachment of the retina to the lifting of the ties, Crookham testified that, on the

afternoon of December 28, while he was loading the ties on the truck, he had a burning sensation in his eye. Crookham testified (R. 55):

> "A. I started to lift a tie. I reached down got it. It was a heavy one, a real heavy tie; I lifted it up. It just felt like salt in my eye. It wasn't a sharp pain—just a kind of burning sensation. * * * I took off my gloves and wiped my glasses.
>
> * * *
>
> A. It was just like it was blurred, like scum on my eye."

However, his doctor, Dr. Pehsmidt, who took notes of his conversation with Mr. Crookham, testified:

> "Q. Now, doctor, whatever the day that he woke up and complained of the loss of vision, the night prior to that he told you that he had flashes of light in the eye?
>
> A. Yes, sir.
>
> Q. That is the only previous history that he gave you of having any injury to his eyes?
>
> A. That wasn't history of injury to his eyes, was it?
>
> Q. Whatever it was, the occurrence, occasion, phenomena, that is the only thing he mentioned?
>
> A. Without probing? Essentially that is correct." (R. 110)
>
> "Q. He didn't tell you that the day previous to the time he woke up in the morning (without sight) that he had a burning sensation in his eye, did he?
>
> A. If he did, it doesn't appear in my record.
>
> Q. If he had made such a statement to you, would you have had it in your record?
>
> A. It would have made no significant difference in relation to a retinal detachment.
>
> Q. If he had said he had a burning sensation, you would have put it down?
>
> A. I probably would have put it in on the record.
>
> Q. If he had flashes in his eye when he was supposed to be lifting ties and had told you?

A. I would have definitely put it on. When he has had burning sensation again, I would have paid no attention to it. The retina has no nerve fibers, no pain fibers.

Q. On detachment of the retina there is no pain?

A. No. It can't happen. Pain-wise you just don't know you got it." (R. 110). (Parenthetical language supplied.)

The flashes of light Crookham had on going to bed on the night of December 28, 1955, is some indication that the retina separated from the eye at that time. Dr. Pensmidt testified:

"Q. Now, these flashing of lights is some indication that the retina at that time is going through the process of separating from the other wall?

A. In many cases that is true, in others, no." (R. 111).

A detached retina can be caused by a number of things, a nearsighted person, such as the plaintiff and at plaintiff's age, can have a detached retina by lifting ordinary weights in the course of a day's work, and Dr. Pansmidt testified:

"Q. You also know, do you not, doctor, that a person who is nearsighted and who has had a certain amount of deterioration due to age, could have a detached retina with a very slight amount of physical energy?

A. I think that is true.

Q. It wouldn't be necessary for him to be lifting any object, just average labor, that could do it?

A. It could." (R. 105)

On direct examination, Dr. Pensmidt testified:

"A. * * * He (Crookham) further stated that on the previous night he had noticed a brilliant flash of light like lightening *(sic)* on going to bed. On the previous day, that is the day before, he said that he had been doing heavy lifting of railroad

ties; that he had never done any other type of work.

Q. So he said that he had been lifting railroad ties the preceding day?

A. Yes." (R. 97) (Parenthetical language supplied.)

"Q. Doctor, assuming and bearing in mind the history taken and your objective findings and the subjective complaints that were given to you by the patient, do you have an opinion as to whether or not the lifting of the cross-ties as described to you by the patient could have been the inciting or producing cause of the detachment of the retina?

* * *

A. Yes, I do believe the lifting of the cross-ties could have been the inciting cause." (R. 102)

On cross-examination, Dr. Pensmidt testified:

"Q. I believe you stated that he (the patient) had arteriosclerosis in keeping with his age, which at the time was 62?

A. Yes, sir.

* * *

Q. And nearsighted persons are more prone to have detached retina than farsighted persons. That is your observations and according to reports made by persons who have made a study in this particular field?

A. Yes, sir.

Q. Now, a person can have a detached retina from a very minor lift, can they not?

A. Yes, sir."

* * *

"Q. You also know, do you not, doctor, that a person who is nearsighted and who has had a certain amount of deterioration due to age, could have a detached retina with a very slight amount of physical energy?

A. I think that is true.

Q. It wouldn't be necessary for him to be lifting any object, just average labor, that could do it?

A. It could.

Q. *Of course, you don't know what caused this one?*

A. *No, sir.*" (R. 104-106) (Emphasis and parenthetical language supplied.)

"Q. Sometimes you have had detachment from, in your observation and study, from young persons jumping hurdles. There are cases from persons stepping from one step down to the other. Jar would be the trigger that sets it off?

A. That is right." (R. 108)

Dr. M. K. Humphries, Jr., and the only other ophthalmologist testifying, testified as follows on direct examination:

"Q. Doctor, from the history that he gave you of lifting heavy cross ties and the attendant pain that followed, and your examination of him on May 3, 1957, what is your opinion as to the cause or connection between his aiding in lifting the cross ties and the detachment of the retina of his left eye?

* * *

A. I would like to say something about retinal detachment in preference to answering this question.

It certainly is true that most retinal detachments occur somewhere after fifty years of age and about two-thirds of them occur in nearsighted individuals.

A retinal detachment can be due to direct trauma; somebody might hit you in the eye with a rock and rupture your eye ball; it can be due to a severe bruise. That is something that we all see. But then, there are a lot of indirect ways of getting a retinal detachment. And sometimes it is hard to answer in a categorical sort of way because as people get older there are changes that occur and there are changes that occur in the retinal.

Now, with a nearsighted eye and being sixty years old plus, it is not inconceivable to think that this man may have had some degenerated changes in his retina, whether you can see them or whether you can't see them. And, to back this up, eyes

have been examined in a pathological laboratory to demonstrate this fact.

And, then comes the question of what in the world does this have to do with a detached retina, because you can get a detached retina from so many things. You can just lift something heavy and maybe the increased volume of blood in your eye can cause enough dispension of a weakened point in a retina to cause a break in it, and that has been proven. The literature on opthamology will point to that fact and it is an accepted fact in opthamology that strain, heavy physical exercise, and even coughing in—and this is the trick point—in an eye, that is, predisposed, can be the deciding factor which precipitates the detachment.

Now, you are asking me and Mr. Crookham asked me, whether I thought lifting those railroad ties caused his retina to separate. And I told him that was a hard question to answer. But I recently discharged a patient from the hospital who, during a coughing spell, separated an entire left retina. And I have had them in the office from lifting sacks of wheat and strain which causes retina detachment.

And it is not beyond my belief that this could have been a factor. Not the main actor, but a secondary factor, which contributed to his retinal separation. The main factor, of course, would be the degenerated changes of old age, nearsightedness. Those two would be the main factors." (R. 241-243)

On cross-examination, Dr. Humphries testified:

"Q. In other words, Doctor, those retinal detachments you can sometimes trace them to trauma and sometimes you can't, sometimes, especially with older people, a very slight amount of pressure will produce it?

A. Well, that is true, and that's the reason I say that it is hard to make an absolute statement because moving a table, lifting, and things like that can. Of course, you tighten your abdominal muscles

you send more blood up to your head and even the blood vessel can be a factor in that kind of thing.

Q. This could be true, too, could it not, by way of illustration, in a laymen's way: Take a shoestring that's new and put it in a pair of shoes and it can stand quite a bit of strain. As it gradually wears and gets older sometimes it is a very small amount of pressure will cause it to break. That illustration is not inapt in connection with detachment of a retina, especially these people who are predisposed to have it.

A. That is quite true." (R. 252).

"Q. * * * And is it not also true that a person can have a detached retina, especially those after they get fifty, when they don't have any extra exertion, but it may come with a normal amount of exertion?

A. That's true." (R. 246)

There is no medical evidence that if there had been four or six men and all equipped with tie-tongs that Crookham would not have experienced a detachment of the retina of the left eye. Crookham experienced no difficulty in loading the same kind of ties in the morning as in the afternoon. The same strain in loading ties would be put on the right eye as on the left eye. The retina of the right eye did not detach while loading the same ties.

Crookham testified that before this occasion he had sweat in his eyes which caused a burning sensation, as follows:

"Q. When you get sweat in your eyes that causes a burning sensation, doesn't it? You have had sweat cause a burning sensation?

A. Sure." (R. 73)

It is interesting to note that although Crookham had a hernia at the time of loading the ties, no complaint was

made that the lifting of the ties put any strain on his hernia or injured it in any way. (R. 85). The work of loading the ties was nothing unusual.

Crookham testified (R. 81) as follows:

> "Q. In fact, you had enough men there to do that kind of work?
> A. That is about what they always send is four.
>
> * * *
>
> Q. One man on the section could lift 50, 60 or 70 pounds, couldn't he without any difficulty.
> A. Why, yes.
> Q. If a tie weighed 200 pounds and one man was on one end and another man on the other end that would be 100 pounds a piece?
> A. I suppose so.
> Q. If a man was in the middle that would make about 66 pounds a piece?
> A. Yes.
> Q. Nothing unusual for a man on a section to lift 100 pounds is there?
> A. I have done it.
> Q. Nothing unusual is it?
> A. No, that is right."

APPENDIX B

Abstract of Compensation Cases Dealing with Detachment of Retina Referred to in Respondent's Brief

(1) *R. G. Le-Tourneau, Inc.* v. *Industrial Commission*, 396 Ill. 435, 72 N. E. 2d 483 (1947).

This case involved a claim for loss of sight in one eye caused by a detachment of the retina. The claimant contended that this detachment was caused by the strain of lifting incident to his work. He had been employed for about a year in dipping metal castings, weighing from one to fifty-five pounds, in a paint tank and then hanging

them on metal hooks on a rack to dry. The hooks were about level with his nose and two and one-half feet in front of him. Sometimes the heavier castings would tend to slip off the hooks, and it would require some strain to keep them from slipping. During an eight hour day he would handle castings weighing a total of 4,000 to 6,000 pounds. On the day in question he had handled no heavy castings. After two hours' work, during which he handled 130 2-pound castings and 51 1-pound castings, he went to a shop meeting on the premises. He had suffered no accidents or noticeable symptoms of any kind, yet when he was reading cards at the meeting, he noticed he could not see out of his right eye. There was medical testimony that retinal detachment such as claimant suffered could be caused by a blow or the strain of heavy lifting, or by old age or debilitating diseases. While the doctors were in general agreement as to the possible causes, they could not state definitely how claimant's injury occurred except that it *could* be caused by strain or trauma. In reversing a judgment confirming an award of compensation, the Court held that there was no proof of an accident and that the award was against the manifest weight of the evidence. The Court said: "There is no evidence * * * connecting the injury complained of with any accident occurring on the morning in question. There is no doubt but what the employee * * * suffered a detached retina causing the loss of sight in the right eye, but there is no evidence on any hand to connect the injury with the work which was being done. * * * There is no testimony * * * that the work performed by the claimant caused the injury. The testifying physician stated only that strain *could* cause the detached retina. * * *" (Emphasis supplied).

(2) *Industrial Commission of Ohio* v. *Auler*, 49 Ohio App. 12, 194 N. E. 887 (1934).

This case involved a claim by a carpenter's tender for blindness from hemorrhage of the retina caused by continuous heavy lifting. On the occasion in question the claimant and a fellow worker were carrying an angle iron weighing 150 pounds when the claimant suddenly became blind. However, in reversing a judgment awarding compensation and rendering a judgment denying the claim, the Court held that the injury was not accidental. The Court said: "[I would not] seem that his condition was the result of a physical injury by striking or being struck by any angle iron, or by any other object, or that anything unusual occurred except that he tripped and fell as a result of dizziness, a half hour before his vision failed. He was engaged in his usual employment, doing his work in the usual way. If it be said that the repeated lifting and carrying of angle irons was such work as induced (claimant's affliction) then in the words of the Supreme Court (of Ohio) 'Impairment of physical condition accruing from constant and continued labor, no matter how heavy or arduous it may be, is not covered by the Workmen's Compensation Law. Such impairment does not come within the meaning of the term *injury*.'" (*Parenthetical language supplied*).

(3) *Powers* v. *Consolidated Vultee Aircraft Corp.*, 61 Ariz. 362, 149 P. 2d 668 (1944).

This case involved a claim for detachment of the retina of the right eye alleged as a result of jumping two feet from the fuselage of an airplane to the concrete floor of the defendant's factory. Claimant, age 58, was employed as a fitter and oxygen mechanic and worked in fuselages in the airplanes. His work necessitated jumping out of turret holes in the bottom of the fuselages to the concrete floor of the factory, a distance of two feet. On the occasion in question he hurt his ankle and went to the first-aid station in the factory, receiving

treatment for a slight strain. Although he testified he felt a sensation in his eye at the time, he did not believe it of any importance and did not tell the doctor at the aid station. He worked regularly for 9 days, when he went to an eye specialist because his eye continued to bother him. The doctor observed a flat detachment of the retina in the right eye and asked him if he had been hit in the eye by anything or suffered any blow to the head. He could think of none. After persistent questioning by his doctor on a later occasion, he inquired if jumping out of the airplane could have caused it. The doctor was of the opinion that this was a probable cause of the detachment and was supported in his opinion, but other doctors expressed a contrary view, which the commission adopted in denying an award. In affirming the order denying compensation, the Court held that the decision was amply supported by medical testimony.

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(4) *Miller* v. *Lycoming Mfg. Co.*, 135 Pa. Super. 558, 7 A. 2d 22 (1939).

This case involved a claim for loss of vision in an eye caused by detachment of the retina. At the time in question, the claimant was breaking up scrap iron with a 15-pound sledge hammer, as he had done on an average of two hours a day for seventeen years, when he suddenly noticed that his sight was affected. He attributed this to his goggles and immediately asked for and was given another pair, but these failed to help. *The defendant submitted no testimony* and an award was entered in favor of the claimant. However, in reversing the judgment which affirmed the award, the Court held that the *claimant's own evidence* failed to establish either causal relation or accidental injury within the perview of the statute. The Court said: "Now, the claimant admits there was no direct blow on the eye, that is, that no foreign substance came in contact with the eye. * * * There was evidence

* * * that prior to (the day in question) the claimant enjoyed normal vision and good health. Several of the experts gave testimony * * * that the detachment of the retina insofar as it directly affected vision was caused by one of the very blows that claimant struck * * * as is described in his testimony. It does not follow as a necessary conclusion that claimant has suffered a compensable injury * * *. While he (the doctor) testified that in his opinion a blow struck with the hammer caused the final separation which reached a point where it was manifest by loss of sight, it occurred only by reason of a pre-existing weakness. He explained that the final effect might come from jumping from a wall and landing with a hard shock or riding over a railroad track in an automobile * * *. Viewing the testimony in the light most favorable to the claimant it was sufficient to sustain a finding that the effect of the blow struck on the scrap at the time (by the) claimant indirectly transmitted through the body of the claimant (the force which) caused the final detachment which resulted in the loss of the industrial use of the eye. At the same time the claimant proved that indirect trauma will not cause a detachment of the retina unless there is a predisposing condition, and when such condition exists the detachment may be advanced by any movement which transmits force through the body to the eye. With the predisposing condition, the final disaster might occur while riding in an automobile over a rough road or even while lying in bed. *Direct trauma may cause a detachment without any predisposing condition, but there was no evidence of direct trauma, and it is not even suggested that there was a direct blow to the eye or contact of foreign substance with it.* Such being the evidence, it follows that the injury was not due to an accident as defined by the statute. * * * Not only has the claimant failed to prove an accident, but he has affirmatively shown that his injury is the natural culmination of

a progressive weakness in the eye." (Emphasis supplied). In the Crookham case, Dr. Humphries says that lifting of railroad ties was, "Not the main factor, but a secondary factor, which contributed to his retina separation. The main factor, of course, would be the degenerated changes of old age, nearsightedness. Those two would be the main factors." (R. 243)

(5) *Wood* v. *W. E. Joyce Co., Inc.*, 228 App. Div. 729, 239 N. Y. Supp. 110 (1930).

In this case the claimant, a carpenter, fell from a ladder while at work, landing in a sitting position. He regarded the matter as of little consequence and continued to work until he became suddenly blind while at work three weeks later. The cause of blindness was due to a detachment of the retina. There was evidence that the eye was bloodshot following the accident and there was some pain and blurring of vision. However, no doctor would go further on the question of casual relation between the fall and the detachment of the retina than to say it was "*possible*" to have been so caused. In reversing an award of compensation, the Court held that this was insufficient to sustain an award, stating that: [The doctors] say it is 'possible' but go no further. In the absence of other evidence leading to a reasonable conclusion this is not sufficient. * * * The finding that the detachment of the retina of the right eye arose naturally and unavoidably from the accident is not sustained by the evidence, and the award should be reversed * * *." (*Parenthetical language supplied*). (It is to be observed that in the above case the claim was denied, although there had been *actual trauma* to a part of the body.)

APPENDIX C

Pruitt v. N. & W. Railway, 188 Ky. 204 221 S. E. 552.

This was a F. E. L. A. action instituted by Pruitt against the railway company to recover damages for the loss of one of his feet, which he averred was the result of negligence upon the part of the railway company.

> "Pruitt was a section hand at the time of the injury suffered by him, and was engaged, together with others, under the directions of a section foreman, in repairing the track of a switch of the railway company near West Ironton, Ohio * * *. A tie in the road bed having decayed, it became necessary to remove it and to put a new tie in its place, and four of the section gang, with Pruitt among the number, were directed by the foreman to do this piece of repairing, while other members of the gang were engaged near by in similar work * * *. (All four of the men) * * * were individuals of many years' experience in that kind of work * * * (and one of them had previously been a foreman) * * *. Pruitt at the time was above 50 years of age * * * and he had frequently witnessed such work, and was well acquainted with the manner in which it was done * * *.
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> "It does not appear that the foreman gave any particular directions to the men as to the method which they should adopt, or the manner in which they should remove the old tie and replace it with a new one. The foreman was immediately present when the work began, but before it was finished he had turned away and went about other duties, and was probably at a distance of 40 or 50 feet when * * * (in the process of removing the old tie, the accident occurred)." (*Parenthetical language supplied*).

After the plaintiff and defendant had rested, the Court directed a verdict for the defendant and the plaintiff ap-

pealed insisting that the defendant was negligent because that, among other things:

> "(1) The appellant was an inexperienced servant, and known to be such by the railway company * * * (and it failed to instruct him and warn him of incidental dangers). (*Parenthetical language supplied*).
>
> "(2) The foreman of the railway company failed to supervise the work and to direct the manner of its performance."

In affirming the lower Court's decision the Court considered plaintiff's contention, holding that:

> (a) "Where there are no hidden dangers, and everything about * * * (the work) * * * is such that an ordinary intelligent person will readily see and understand all the dangers incident to it, and to perform it there is no particular skill necessary; and nothing required but ordinary intelligence and physical strength sufficient to do it, there is no duty imposed upon the master to give instructions about the work, nor warnings touching it.
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> (b) "Contention * * * (number two) * * * is not meritorious. It was a perfectly simple operation, and susceptible of performance by any person having ordinary intelligence and a sufficiency of physical strength to do it, free from intricacies, and not dangerous * * *. To require a foreman to stand immediately by and to give directions as to each action of the men, in so simple an operation and so well understood by the men performing it, and where the number engaged is so small, would carry the doctrine of necessity of supervision and direction to an absurd length." (*Parenthetical language supplied*).